

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

NORFOLK DIVISION

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 2:17cr126

DARYL G. BANK

Defendant,

**MOTION IN LIMINE TO PROHIBIT THE GOVERNMENT FROM
INTRODUCING EVIDENCE DEFENDANT VIOLATED SECURITIES
REGULATIONS**

COMES NOW the, Defendant, Daryl G. Bank, by Counsel, and hereby moves this honorable Court for entry of an order prohibiting the government from referring to the investments at issue in this case as securities and from introducing at trial evidence that Mr. Bank violated or circumvented securities regulations. In support of his motion Mr. Bank states as follows:

1. Mr. Bank is charged in a 19-count indictment with conspiracy to commit mail and wire fraud, conspiracy to launder monetary instruments, mail fraud, wire fraud, and unlawful monetary transactions;
2. The allegations stem from Mr. Bank's marketing and sale of various investments and the government's contentions that Mr. Bank made various omissions and misrepresentations concerning these sales;

3. The government asserts that Mr. Bank violated various disclosure obligations that are meant to apply to the sale and marketing of securities;

4. For instance, the government alleges that Mr. Bank did not disclose the amount of his fees, that he failed to notify investors that he was under investigation by governmental regulators, and that he had been banned from associating with any FINRA-licensed broker/dealer ;

5. Mr. Bank, however, is not charged with a violation of any securities statute;

6. Nor are the investments at issue in this case securities. See *United States v. Howey*, 328 U.S. 293 (1946);

7. Because Mr. Bank was not a securities broker or dealer and because these investments are not securities, he cannot be held to the same standard as securities broker;

8. Furthermore, the misrepresentations and omissions alleged by the government are not relevant to the jury's consideration of whether Mr. Bank committed any of the crimes for which he stands charged;

9. The introduction of such evidence would unduly prejudice Mr. Bank in the eyes of the jury; and

10. For these reasons the government should be prohibited from referring to theses investments as securities and from introducing any

evidence that Mr. Bank failed to adhere to securities laws or regulations in its efforts to prove that Mr. Bank committed any of the offenses for which he has been indicted.

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of May, 2018, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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